

Pyrolac Corp. and National Organization of Industrial Trade Unions. Case 22-CA-19399

May 18, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Upon a charge filed by the National Organization of Industrial Trade Unions (the Union) on August 19, 1993, the General Counsel of the National Labor Relations Board issued a complaint on October 1, 1993, against Pyrolac Corp. (the Respondent) alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 1, 1994, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support with the Board. On April 5, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 19, 1993, notified the Respondent that unless an answer were received by close of business on October 26, 1993, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a New Jersey corporation, with an office and place of business in Hawthorne, New Jersey, has been engaged in the manufacture of paint and related products. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations,

derived gross revenues in excess of \$50,000 from the sale and shipment of its products directly to customers located outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by Respondent at its Hawthorne, New Jersey facility but excluding all office clerical employees, foremen, watchmen, guards and supervisors as defined in the National Labor Relations Act.

Since at least June 1, 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 1, 1993 to May 31, 1996.

At all times material herein, by virtue of Section 9(a) of the Act, the Union has been, and is, the exclusive collective-bargaining representative of the unit.

Section VII of the collective-bargaining agreement provides that the Respondent will make monthly dues deductions from the unit employees' pay and remit said moneys to the Union on a monthly basis.

Schedule A, section 4 and 7 of the collective-bargaining agreement provides that the Respondent will make monthly contributions to the Union's pension, health and welfare funds on behalf of all employees in the unit.

Since about June 1, 1993, the Respondent unilaterally failed to apply all the terms and conditions of the collective-bargaining agreement by failing to deduct and transmit to the Union dues from unit employees' pay pursuant to section VII of the collective-bargaining agreement, and by failing to make the required contributions to the Union's pension, health and welfare funds on behalf of all employees in the unit.

Although the subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since June 1, 1993, to deduct and transmit to the Union dues from employees' pay pursuant to section VII of the 1993-1996 agreement, we shall order the Respondent to deduct and transmit to the Union said dues as required by the agreement and to reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make the required monthly contributions to the Union's pension health and welfare funds pursuant to schedule A, section 4 and 7 of the 1993-1996 agreement, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required monthly contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Pyrolac Corp., Hawthorne, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the National Organization of Industrial Trade Unions, as the exclusive representative of its employees in the unit described below, by failing to deduct and transmit

authorized union dues from employees' pay pursuant to section VII of the 1993-1996 agreement, and by failing to make the required monthly contributions to the Union's pension, health and welfare funds on behalf of all employees pursuant to schedule A, section 4 and 7 of the agreement:

All employees employed by Respondent at its Hawthorne, New Jersey facility but excluding all office clerical employees, foremen, watchmen, guards and supervisors as defined in the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Deduct and transmit to the Union authorized dues from employees pay pursuant to section VII of the 1993-1996 agreement, and reimburse the Union for its failure to do so since June 1, 1993, with interest, as set forth in the remedy section of this decision.

(b) Make the required contributions to the Union's pension, health and welfare funds on behalf of all unit employees pursuant to schedule A, section 4 and 7 of the 1993-1996 agreement that have not been made since June 1, 1993, and reimburse the unit employees for any expenses they may have incurred as a result of the Respondent's failure to do so, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Hawthorne, New Jersey, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 18, 1994

William B. Gould IV, Chairman

James M. Stephens, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with the National Organization of Industrial Trade Unions, as the exclusive representative of our

employees in the unit described below, by failing to deduct and transmit to the Union authorized dues from employees' pay pursuant to section VII of the 1993-1996 agreement, and by failing to make the required monthly contributions to the Union's pension, health and welfare funds on behalf of all employees pursuant to schedule A, section 4 and 7 of the agreement:

All employees employed by us at our Hawthorne, New Jersey facility but excluding all office clerical employees, foremen, watchmen, guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL deduct and transmit to the Union authorized dues from employees pay pursuant to section VII of the 1993-1996 agreement, and reimburse the Union for our failure to do so since June 1, 1993, with interest.

WE WILL make all required contributions to the Union's pension, health and welfare funds on behalf of all unit employees pursuant to schedule A, section 4 and 7 of the 1993-1996 agreement that have not been made since June 1, 1993, and WE WILL reimburse the unit employees for any expenses they may have incurred as a result of our failure to do so, with interest.

PYROLAC CORP.